

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA

VS.

CLAUDIO ALVAREZ RODRIGUEZ

1:21-CR-179 AJT

ALEXANDRIA, VIRGINIA  
OCTOBER 6, 2021

TRANSCRIPT OF MOTION HEARING, PLEA, AND SENTENCING  
BEFORE THE HONORABLE ANTHONY J. TRENGA  
UNITED STATES DISTRICT JUDGE

Proceedings reported by stenotype, transcript produced by  
Julie A. Goodwin.

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1 (OCTOBER 6, 2021, 9:08 A.M., OPEN COURT.)

2 THE COURTROOM DEPUTY: Criminal Case Number 21-CR-179,  
3 *United States of America versus Claudio Alvarez Rodriguez.*

4 Will Counsel come to the podium and state your name  
5 for the record.

6 MR. GREEN: Good morning, Your Honor. Jake Green,  
7 Joseph Attias, and Tony Roberts for the United States.

8 THE COURT: Good morning.

9 MR. ROBERTS: Good morning, Your Honor.

10 MS. MERTZ: Good morning, Your Honor. Cadence Mertz  
11 and with me is Ryan Hope. He's a volunteer attorney in our  
12 office for Mr. Alvarez, who is present in the courtroom.

13 THE COURT: All right. Welcome everyone.

14 We're here on the defendant's motion to dismiss the  
15 indictment. I have reviewed the pleadings. Be pleased to hear  
16 further from counsel.

17 MS. MERTZ: Your Honor, I know the Court will have --  
18 be very well steeped in the pleadings and familiar with the --  
19 with what I think is very thorough briefing on both sides, so  
20 I'm going to be very brief. I just wanted to make one point  
21 crystal clear, which is that the law regarding -- the Supreme  
22 Court precedent regarding whether or not the purpose of the  
23 1929 law is imported into the 1952 law is clear and direct and  
24 not in the government's favor here.

25 The law says that the purpose of the originally

1 enacted statute does import in the -- in the later reenactment  
2 when there's substantive similarity and no statement to the  
3 contrary. The cases that the government cites to try to attack  
4 that principle don't represent the situation we have here,  
5 which is a substantive reenactment of the exact same language  
6 with very minimal distinctions.

7           The two primary cases on which the government  
8 relies which are *Abbott v. Perez*, which is a Supreme Court  
9 case, and *NAACP v. Raymond*, which is a Fourth Circuit case, in  
10 those cases the Courts were talking about, prior provisions  
11 that either were not enacted or had been -- in fact, in the  
12 *Raymond* case had been rejected, and then the North Carolina  
13 Congress came back and made a new law, which had different  
14 provisions and was substantively different which was the  
15 subject of that opinion.

16           So it is -- that is not what we have here. We have  
17 the Immigration Naturalization Act reenacting substantively the  
18 exact same language which became -- which is what we now know  
19 as 1326(a). So we -- I just want to highlight that point.

20           That said, for all of the reasons that we have put  
21 in our papers and that the District of Nevada put -- you know,  
22 discussed in detail in *Carriillo-Lopez*, the 1952 enact --  
23 reenactment was problematic for its own reasons and had its own  
24 racial animus at the -- at that time. That was -- that was a  
25 purpose of the reenactment. And the -- and so it is -- this

1 Court does not need to rely entirely on what happened in 1929.

2 Our argument at that -- is that, yes, and -- and  
3 the government has previously conceded this in *Carrillo-Lopez*,  
4 the 1929 law had as a purpose racial animus. But in 1952 that  
5 Congress also had racial animus, and so this Court doesn't have  
6 to rely entirely on 1929.

7 Your Honor --

8 THE COURT: What's the standard of review in your  
9 view?

10 MS. MERTZ: I'm sorry.

11 THE COURT: What's the standard of review of this  
12 legislature?

13 MS. MERTZ: Your Honor, our -- for -- for the question  
14 of whether or not equal protection --

15 THE COURT: Whether it's constitutional --

16 MS. MERTZ: Yeah.

17 THE COURT: -- or not.

18 MS. MERTZ: Our -- so our -- our argument is that,  
19 that this Court should be looking at the test that was laid out  
20 in *Arlington Heights* and applying that test, which is whether  
21 or not there is -- a purpose was racial animus, and then  
22 whether or not there is disproportionate impact, which there  
23 overwhelmingly is. I don't think the government really --  
24 other than pointing to geography, there really isn't almost  
25 anybody else who has been prosecuted under this statute.

1           And Mr. Alvarez is Mexican. He was born in Mexico.  
2 He is in fact who this law originally was intended to target,  
3 which was stated in the congressional record, and -- and that's  
4 been the case consistently for the last hundred years.

5           So with that, Your Honor, if the Court has  
6 questions, I would be happy to answer them, but --

7           THE COURT: All right.

8           MS. MERTZ: -- otherwise we -- we believe that this  
9 law should be struck down at this point.

10          THE COURT: All right. Well, let me ask a question.  
11 What's the status of the case in the Fourth Circuit on this  
12 issue?

13          MS. MERTZ: It's my understanding and Mister -- I  
14 think Mr. Attias may know more about this, but I believe it's  
15 going to be argued next week. And so we're cognizant,  
16 obviously, that that is going to happen, and obviously -- it  
17 may take a while, obviously, for the Court to issue an opinion,  
18 but it's my understanding they argue next week.

19          THE COURT: All right.

20          Counsel.

21          THE COURT REPORTER: Can I get your name?

22          MR. ATTIAS: Joseph Attias, A-T-T-I-A-S.

23          THE COURT REPORTER: Thank you.

24          MR. ATTIAS: Sure.

25          Your Honor, the case in the Fourth Circuit was

1 listed for the October sitting, but unfortunately, it was  
2 pulled off the calendar. So I'm guessing it will end up in  
3 early December, but we don't know yet, so there's actually no  
4 date yet.

5 THE COURT: Yeah.

6 MR. ATTIAS: So --

7 THE COURT: It's -- it's an interesting issue where a  
8 lot of different strains of constitutional thought seem to, I  
9 don't want to say collide, but certainly bump into each other.

10 MR. ATTIAS: I agree.

11 THE COURT: Since you're dealing with the immigration  
12 area, there seems to be -- there's a whole different approach  
13 that courts have adopted.

14 What struck me, which apparently is not a correct  
15 thought, but it occurred to me, since no one's really briefed  
16 it or mentioned it, is that, you know, at the border the Fourth  
17 Amendment doesn't apply. On admissibility issues, the due  
18 process clause doesn't apply. But apparently the equal  
19 protection clause in some fashion would apply even though when  
20 enacted it would be directed to people who are noncitizens  
21 outside of the United States and who would typically not have  
22 any standing or constitutional rights. But I understand that's  
23 not the analysis that's been adopted anywhere, and it comes  
24 down to whether the *Arlington Heights* approach is really even  
25 applicable to this context.

1 MR. ATTIAS: That -- that's right, Your Honor, and  
2 there are different shades of protection, I think if you go  
3 through the law. Even *Zadvydas* -- Supreme Court's decision in  
4 *Zadvydas* recognizes that aliens, even illegally here, have  
5 certain due process rights --

6 THE COURT: That's after they're here.

7 MR. ATTIAS: Right.

8 THE COURT: Yes.

9 MR. ATTIAS: Is applicable. We think that right is  
10 protected by the rational basis review. But even *Zadvydas*  
11 recognizes that the extent of that protection will vary  
12 depending on circumstances.

13 THE COURT: Right.

14 MR. ATTIAS: And how you have cases like *Reno versus*  
15 *American Arab* -- *American-Arab Anti-Discrimination Committee*  
16 which concluded -- that's a Supreme Court decision -- which  
17 concluded that aliens unlawfully present in the United States  
18 don't have a constitutional right to lodge a selective  
19 enforcement challenge to their deportation. That's  
20 deportation. It's not a criminal proceeding.

21 But I agree. These questions are definitely  
22 complicated.

23 If I could respectfully make a suggestion to the  
24 Court which is the way most courts have handled this is to  
25 basically just assume that *Arlington Heights* applies and -- and



1 apply the factors under our --

2 THE COURT: Right.

3 MR. ATTIAS: -- our argument. The defendant's theory  
4 fails notwithstanding applying *Arlington Heights*. That's also  
5 the approach the Supreme Court actually took in *Regents*. I  
6 don't think it's fair to characterize *Regents* as having decided  
7 that *Arlington Heights* applies full stop to the immigration  
8 context.

9 The Supreme Court in *Regents* was they were faced  
10 with a situation where the Solicitor General took the position  
11 that the rescission of DACA should be subjected to no review,  
12 not as to the APA claim, but as to the equal protection claim,  
13 so they were faced with no review versus *Arlington Heights*'  
14 motive probing review. And the Supreme Court just decided to  
15 apply *Arlington Heights*, apply all the criteria, and they held  
16 that the defendants -- well, that the challenger's argument  
17 failed even under -- under *Arlington Heights*.

18 If I could just make two brief, historical points  
19 and then hit on the key -- what I think are the key aspects  
20 of --

21 THE COURT REPORTER: Can you be a little louder?

22 MR. ATTIAS: Sure.

23 -- (Continuing) the key aspects of our argument.

24 Number one - and I saw this repeatedly through  
25 the -- through the pleadings - there is no such act as the

1 Undesirable Aliens Act of 1929. Congress did not pass an act  
2 called the Undesirable Aliens Act of 1929. I think the  
3 confusion can be explained as follows:

4           On December 28, 1928, Senator Coleman Blease  
5 introduced the unlawful reentry provision into the Senate. The  
6 House then took that bill and basically sent it back to the  
7 Senate substantially in large. What they basically did is  
8 attach their own bill to it, and in Section 10 of that bill,  
9 they said -- the House said, we're going to call this act the  
10 Undesirable Aliens Act of 1929.

11           The reason why they added that provision is because  
12 one of the -- one of the major provisions that they added  
13 to the Senate's very streamlined 1929 unlawful reentry law was  
14 a provision adding eight additional grounds for deportation of  
15 certain aliens. Those would have been the undesirables who  
16 would have been subject to deportation.

17           The Senate then got that bill back, and because it  
18 was substantially different from what they had sent to the  
19 House, the two chambers created a committee. They conferenced;  
20 they ironed out their differences, and in the House report  
21 detailing the -- in the compromise's House Report 2802, from  
22 March 1st, 1929, which is three days before the law was passed,  
23 the House specifically states in two places that the House  
24 recedes from its proposed amendment to the title of that act.

25           So as it -- as introduced into the Senate and as

1 enacted by Congress and signed by the president, there's never  
2 been an act called the Undesirable Aliens Act of 1929. It's  
3 always been called an act making it a felony with penalty for  
4 certain aliens to enter the U.S. under certain conditions of  
5 violation of the law. So that's historical point number one.

6 Point number two is that Congress didn't just  
7 blindly reenact the 1929 law in 1952. The easiest way of  
8 seeing that is because the 1929 law was about this big, and  
9 Section 276 in the INA is about this big. So, that's a  
10 superficial way of looking at it, but it's clearly not the case  
11 that Congress just copied and pasted the law. In fact, made a  
12 few important changes.

13 Number one is that Congress added the found-in  
14 clause. The found-in clause is not present in the 1929 law.

15 Number two, Congress removed the phrase, in  
16 pursuance of the law. That phrase was in the 1929 law. They  
17 took it out of the 1952 law, and interestingly in  
18 *Mendoza-Lopez*, the Supreme Court identified that phrase in  
19 pursuance of the law as a possible textual hook for the right  
20 that they would later go on to identify as the right of a -- of  
21 the defendant to collaterally challenge their deportation --  
22 their deportation order, what would eventually become 1326(d).

23 Number three, Congress merged together the 19  
24 seven -- the 1917 and the 1918 unlawful reentry statutes. That  
25 applied only to prostitutes and to anarchists. Each of those

1 provisions had their own penalty. The 1929 law had its own  
2 penalty. This is in the center of court. Congress fused the  
3 three together and said, this is just a general unlawful  
4 reentry's -- unlawful reentry provision. It applies no matter  
5 what the reason you are deported, and the penalty is going to  
6 be too -- is going to be the same no matter the reason for your  
7 deportation.

8 Congress also defined the phrase -- the term enter  
9 in the definition sections in the INA. Previously that phrase  
10 was not defined.

11 And there are other -- there are other changes that  
12 Congress made in 1952. The point is Congress didn't just copy  
13 and paste the 1929 law and stick it into the INA in 1952.

14 At the end of the day, though, Your Honor, none of  
15 this really matters because we're not here challenge -- we're  
16 not here defending the 1929 law. We know from *Abbott* that even  
17 a finding of prior discrimination doesn't flip the burden of  
18 proof. And so what that means in this case is that even if the  
19 Court concludes as a factual matter or just assumes for the  
20 purposes of this motion that in 1929 -- and that's the way most  
21 courts have dealt with this issue, that in 1929 Congress passed  
22 the unlawful reentry statute out of an impermissible motive.  
23 That wouldn't get the defendant -- that would only get the  
24 defendant so far because, again, the critical mistake the  
25 district court made in *Abbott* was to put the onus on the law as

1 defender to purge or expedite or cure the taint of the prior law,  
2 and that is exactly the argument the defendant makes here.

3 On page 25 of the defendant's motion, the defendant  
4 writes: The Congress made no attempt to remove or distance  
5 itself from the 1929 legislation's discriminatory purpose.

6 Page 26, the defendant says, The absence of any  
7 congressional statement to vitiate the racist origins --

8 THE COURT REPORTER: Can you go a little bit slower?

9 MR. ATTIAS: Sure.

10 The absence of any congressional statement in 1952  
11 to vitiate the racist origins and intent of the 1929 statute,  
12 dot, dot, dot, defeats the contention that the later enactment  
13 cleansed the original statute's discriminatory purpose.

14 The same thing on page 27, In reenacting the crime  
15 of illegal reentry in 1952, Congress could have chosen to  
16 reflect on the law's racist origin and consequences, but that  
17 didn't happen. And I'm paraphrasing, cutting out a little bit  
18 of the middle, that did not happen.

19 That's exactly the argument, in fact, the same  
20 exact word: Cleanse and cure and purge. That's the same  
21 language that the Supreme Court found in *Abbott* to be  
22 reversible error. And it's actually the same argument the  
23 district court in *Abbott* concluded that the legislator in 2013  
24 didn't engage in, quote, any deliberative process. That's  
25 exactly the same argument we see here.

1           And *Raymond*, to the extent that there's any  
2 daylight between this case and *Abbott* -- and I agree, *Abbott* is  
3 not exactly on all fours of this case because the procedural  
4 posture of *Abbott* is much more complex, but *Raymond* entirely  
5 forecloses the defendant's argument. *Raymond* enacted the very  
6 same voter ID provision maybe two, three years after the Fourth  
7 Circuit itself had concluded that that provision was passed out  
8 of an intent to disenfranchise black voters. The district  
9 court in *Raymond* concluded, just like the district court in  
10 *Abbott*, that the law's defenders had to purge, cleanse, expedite  
11 the taint of the prior enactment.

12           The Fourth Circuit looked at that, applied *Abbott*,  
13 and said that that's reversible error. And that's exact same  
14 argument the defendant makes here.

15           Your Honor, I'm happy to answer any other  
16 questions --

17           THE COURT: All right. Thank you.

18           MR. ATTIAS: -- to sit down.

19           THE COURT: Ms. Mertz, I'll give you the last word on  
20 this.

21           MS. MERTZ: Thank you, Your Honor.

22           Your Honor, I think we would just point the Court  
23 back to the case law, to the distinctions between *Abbott* and  
24 *Raymond* in this case and, again, remind the Court of *Hunter v.*  
25 *Underwood*, which is very similar in terms of the situation that

1 the Court was confronted with there, sort of a fomented  
2 environment leading up, culminating and the passage of a racist  
3 voter disenfranchising the statute. And in that -- in that  
4 case, the Court -- the Court applied, did look back at the  
5 historical context, which is what *Arlington Heights* instructs  
6 the Courts to do.

7           And -- and what it was confronted with was  
8 something similar to what we saw building in the '20s and in  
9 the '50s aimed at Mexicans and other Latino people and -- and  
10 could see that the motivation despite in the *Hunter* case many  
11 amendments to that -- to that law, where provisions had over  
12 time been stripped away, taking away criminal conduct that  
13 could be considered disenfranchising, whereas in this case the  
14 only thing that has happened to the illegal reentry statute is  
15 to ratchet up the penalties over time, although not really  
16 amendments to 1326(a) which is separate obviously from B and D.

17           In any event, we would just point the Court back to  
18 the case law, which we think is very clear in terms of how the  
19 Court should approach its analysis, why this case is not like  
20 *Abbott* and *Raymond*, we are talking about. And essentially not  
21 a cut and paste, because they didn't have that then, but an  
22 importation of the identical language with the minor  
23 distinction which was propagated by I believe it was  
24 attorney -- Attorney General Ford, that was intended to target  
25 Mexicans. And although the government has sort of tried to

1 diminish that point because he was not a legislature, that is  
2 the one amendment that was made in 1952 to the language that  
3 already had existed.

4 So, Your Honor, we would just point the Court back  
5 to the Supreme Court law here that should govern the steps for  
6 the analysis.

7 THE COURT: All right. Thank you.

8 I've reviewed the briefing in this case, as well as  
9 the many cases that have already considered this issue, and I'm  
10 not sure I can meaningfully add to the writings on and opinions  
11 on this that have already been issued. This issue is before  
12 the Fourth Circuit, and I suspect would likely eventually  
13 reach -- reach the Supreme Court.

14 In any event, I've reviewed the arguments on both  
15 sides and concludes that in Section 30 1323 does withstand  
16 constitutional scrutiny under the equal protection clause and  
17 is not unconstitutional based on an impermissible motive in  
18 its -- in its origins or its provenance.

19 So for the reasons -- those reasons and also for  
20 the reasons that have been already stated in the case of *United*  
21 *States versus Francisco Eduardo Palacios Arias*, which is an  
22 opinion by Judge Gibney and from our Richmond Division, which  
23 the Court adopts, the Court's going to deny the motion to  
24 dismiss.

25 All right. How do we proceed from here?



1 MS. MERTZ: Your Honor, in that case, the parties have  
2 anticipated how to proceed and have prepared conditional plea  
3 paperwork, which Mr. Alvarez Rodriguez has reviewed and already  
4 signed so that -- for the purpose of moving forward smoothly.

5 If the Court would take a conditional plea today,  
6 we would ask the Court to do that and proceed immediately to  
7 sentencing. I know the government yesterday filed their --

8 THE COURT: Yes.

9 MS. MERTZ: -- position on sentencing. We would be  
10 prepared to orally proffer some history, and that there's  
11 agreement on the guideline applicability here.

12 Mr. Alvarez Rodriguez is prepared to do that now.  
13 And if the Court is willing, we would ask the Court to go  
14 forward with that. And again, it would be a conditional plea,  
15 which is what the parties have agreed to, preserving this one  
16 single issue.

17 THE COURT: All right.

18 What's the government's position on this?

19 MR. GREEN: Your Honor, we -- we agree with the  
20 defense. We have no problem moving forward with the  
21 conditional plea and -- and immediate sentencing.

22 THE COURT: All right. Hold on a second.

23 (BRIEF PAUSE.)

24 THE COURT: Is a conditional plea, Counsel,  
25 specifically governed by Rule 11?

1 MS. MERTZ: Yes, Your Honor, (a)(2).

2 THE COURT: I'm sorry?

3 MS. MERTZ: Yes, Rule 11(a)(2).

4 THE COURT: (a)(2)?

5 MS. MERTZ: Yes.

6 THE COURT: I see. Thank you.

7 All right. The Court will proceed.

8 All right. Defendant will come to the podium,  
9 please, and be sworn.

10 (DEFENDANT COMPLIES.)

11 THE COURTROOM DEPUTY: Please raise your right hand.

12 (THE OATH WAS ADMINISTERED TO DEFENDANT.)

13 THE COURT: Would you state your full name, please.

14 THE DEFENDANT: Claudio Rodriguez Alvarez.

15 THE COURT: Mr. Alvarez, the purpose of this hearing  
16 is to give you the opportunity to enter a conditional plea to  
17 the charge of illegally reentering the United States after  
18 having been removed, after having been convicted of a felony.  
19 If you enter such a plea, it will be the responsibility of this  
20 Court to ensure that your plea is entered voluntarily. That  
21 is, that no one is forcing you to enter a guilty plea against  
22 your will, and that your guilty plea is not being entered in  
23 exchange for any promises or agreements.

24 The Court also will have the responsibility to  
25 ensure that your plea is entered knowingly. That is, that you

1 understand the consequences of pleading guilty. And in order  
2 for the Court to make those determinations, I'm going to ask  
3 you a series of questions, and for that purpose, you've been  
4 placed under oath.

5 And having been placed under oath, you have the  
6 obligation to answer all of the Court's questions truthfully.  
7 If any of your answers prove to be untrue, you may be  
8 subjecting yourself to additional criminal penalties, including  
9 those for perjury based on the responses you give here in court  
10 today.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: What is your age?

14 THE DEFENDANT: 46.

15 THE COURT: And what is your highest level of formal  
16 education?

17 THE DEFENDANT: 12th grade.

18 THE COURT: And you read, write, and understand the  
19 English language. Is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And of what country are you a citizen?

22 THE DEFENDANT: Mexico.

23 THE COURT: And what is your status here in the United  
24 States?

25 THE DEFENDANT: What's my status?

1 THE COURT: Yes.

2 THE DEFENDANT: I don't understand.

3 No, Your Honor, I don't have --

4 THE COURT: You have no status?

5 THE DEFENDANT: No.

6 THE COURT: All right.

7 You've been represented by a lawyer in connection  
8 with this case. Is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You've been represented by a lawyer.

11 Have you met with your lawyer?

12 THE DEFENDANT: You're my lawyer. Right?

13 Yes. Yes, Your Honor. Sorry.

14 THE COURT: And has your lawyer explained to you the  
15 charge against you and what the government must prove in order  
16 to convict you of that charge?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Has your lawyer explained to you the  
19 consequences of pleading guilty?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you provided to your lawyer all the  
22 facts and information you have and know that may relate to this  
23 charge?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Have you understood -- have you had all

1 your questions answered to your satisfaction?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Have you had any difficulty understanding  
4 anything your lawyer has told you, anything about the charge  
5 against you, or anything about the nature of these proceedings,  
6 including why you're in court here today?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Have you been satisfied with the services  
9 of your lawyer?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you think you've had enough time to  
12 meet with your lawyer and discuss whether or not you should be  
13 entering a guilty plea at this point?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you been under the influence of any  
16 drugs or medication or any other substance that's affected your  
17 ability to understand anything about the charge against you,  
18 anything about -- anything that your lawyer has told you or  
19 anything about the nature of these proceedings?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Ms. Mertz, based on everything you know,  
22 is Mr. Alvarez -- I'm sorry, Mr. Rodriguez competent to enter a  
23 guilty plea here today?

24 MS. MERTZ: Yes, Your Honor.

25 THE COURT: Do you understand that the charge to which

1 you would plead guilty is illegally reentering after removal  
2 and having been convicted of a felony?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And do you understand that by entering a  
5 guilty plea you will be convicted of that charge, just as if  
6 you had gone to trial on a plea of not guilty and were  
7 convicted by a jury?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Has your lawyer explained to you the  
10 maximum punishment you could receive based on the conviction  
11 that would result from your guilty plea?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: The maximum punishment you could receive  
14 is a term of imprisonment up to ten years, a fine of up to  
15 \$250,000, a \$100 special assessment that will be imposed, and a  
16 period of supervised release of up to three years.

17 Do you understand that's the maximum punishment you  
18 could receive?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: I understand that you have not entered  
21 into any written plea agreements. Is that correct?

22 THE DEFENDANT: Yes, Your Honor.

23 MS. MERTZ: Your Honor, actually there is a written  
24 plea agreement.

25 THE COURT: There is a plea agreement? All right. Do

1 you have a copy of it?

2 THE DEFENDANT: Oh, sorry.

3 MS. MERTZ: Yes, Your Honor.

4 THE COURT: Is there a statement of facts as well?

5 MS. MERTZ: Yes.

6 THE COURT: All right. I understand you have entered  
7 into a written plea agreement. Do you have that in front of  
8 you?

9 THE DEFENDANT: Yes, sir. Yes, Your Honor.

10 THE COURT: Does your signature appear on that  
11 document?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And you signed that document?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Did you read that document?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Did you have all your questions answered  
18 about that document?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And did you understand everything in that  
21 document?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Did anyone threaten you or try to  
24 influence you in any way into signing that written plea  
25 agreement against your will?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Is this written plea agreement the entire  
3 agreement you think you have with the United States government?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you think you have any other promises  
6 or agreements or understandings in exchange for your guilty  
7 plea, your conditional guilty plea, that's not in this written  
8 plea agreement?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: If you were to go to trial in this case,  
11 and if after that trial you were convicted, you would have the  
12 right to appeal that conviction and any sentence to a higher  
13 court. Under this plea agreement, you waive, that is you give  
14 up your right of appeal, both as to the conviction that would  
15 result from your guilty plea and any sentence imposed based on  
16 that conviction.

17 Do you understand you've waived your right of  
18 appeal?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Also under this plea agreement, the  
21 government agrees to make certain recommendations. You  
22 understand those are only recommendations. They're not binding  
23 on the Court. Only the Court will decide what sentence to  
24 impose in this case?

25 THE DEFENDANT: Yes, Your Honor.



1 THE COURT: Do you understand that your guilty plea  
2 will be binding on you for the purposes of any immigration  
3 proceedings?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand that as a result of this  
6 conviction there may be immigration consequences?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And is it your decision to enter a guilty  
9 plea here today regardless of what the immigration consequences  
10 are?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Have you discussed with your lawyer the  
13 rights you have as someone charged with a crime and that you  
14 would waive, that is give up those rights by pleading guilty?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You have the absolute right to proceed to  
17 a public and speedy trial before a jury of 12 United States  
18 citizens.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And in order to convict you of this  
22 charge, that jury must unanimously find you guilty.

23 Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: At that trial you would be entitled to be

1 represented by a lawyer, and if you could not afford one, one  
2 would be appointed for you.

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Also at that trial you would be presumed  
6 innocent of this charge, and the government would have the  
7 obligation of proving each and every element of this charge  
8 beyond a reasonable doubt.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Also at that trial you and your lawyer  
12 would have the right to confront any witnesses that the  
13 government presented, to cross-examine those witnesses and to  
14 challenge the admissibility of any evidence that the government  
15 offered.

16 Do you understand?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Also at that trial you and your lawyer  
19 would have the right to present your own defense, and that  
20 would include the right to require any person with relevant  
21 information to be brought into court and to testify and to  
22 bring with him or her any documents relevant to this charge.

23 Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Also at that trial, as part of your

1 defense, you could testify yourself. You could take the  
2 witness stand, be placed under oath, and testify subject to  
3 cross-examination, but you would have absolutely no obligation  
4 to testify. You could remain silent in the face of this  
5 charge, and if you decided not to testify, the government could  
6 not force you to testify or to incriminate yourself in any way.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Also if you made the decision not to  
10 testify, no inference of guilt could be inferred from the fact  
11 that you decided not to testify. You would continue to be  
12 presumed innocent of this charge, and the government would  
13 continue to have the obligation of proving each and every  
14 element of this charge beyond a reasonable doubt.

15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And as I mentioned earlier, if after that  
18 trial you were convicted, you would have the right to appeal  
19 that conviction and any sentence to a higher court.

20 Do you understand?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Having heard all these rights that you  
23 have and that you would give up all these rights by pleading  
24 guilty is it still your decision to enter a conditional guilty  
25 plea here today?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: In addition to the rights that I have  
3 mentioned that you would give up, there will be other  
4 collateral consequences of your entering your guilty plea,  
5 including the forfeiture of any right you might have to vote,  
6 hold public office, serve on a jury, possess a firearm.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have you discussed with your lawyer how  
10 the Court would go about deciding what sentence to impose in  
11 your case?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Have you discussed what we call the  
14 Sentencing Guidelines and how they pertain to you and your  
15 offense?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Those are only guidelines. They're not  
18 binding on the Court. Only the Court will decide what sentence  
19 to impose. It may impose a guideline sentence, and it may  
20 impose a sentence greater than the guidelines or less than the  
21 guidelines, obligated only to impose a sentence within the  
22 maximum punishment that I described to you.

23 Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And in addition to the guidelines, the

1 Court would consider a whole range of other factors, including  
2 the nature and seriousness of this offense, your own personal  
3 history and characteristics and generally what sentence will be  
4 sufficient, but no more than necessary to constitute a just  
5 punishment and to protect the public.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Also as I mentioned earlier, only the  
9 Court is going to decide what sentence to impose so that if you  
10 receive a sentence that is different than what the government  
11 recommends or that your lawyer recommends, or if you receive a  
12 sentence that is different than someone told you you're likely  
13 to receive or that you're expecting, or if you receive a  
14 sentence that you just think is unfair in some way, you  
15 nevertheless are going to be bound by your guilty plea, and you  
16 will not be permitted to withdraw your guilty plea after you  
17 hear what the sentence is.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: I understand that there will be a request  
21 that the Court sentence you today. Do you understand the Court  
22 may or may not do that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And is it your decision to enter a guilty  
25 plea here today regardless of whether the Court sentences you

1 today?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: In a moment I'm going to ask the  
4 government to tell the Court what evidence it would present  
5 against you if this case were to go to trial. I want you to  
6 listen carefully to what the government tells the Court,  
7 because when the government's done, I'm going to ask you  
8 whether you disagree with anything the government has told the  
9 Court about your conduct.

10 Have a seat for a moment, and we'll hear from the  
11 government.

12 MR. GREEN: Your Honor, at trial, the United States  
13 would have proven the following facts beyond a reasonable doubt  
14 with admissible and credible evidence.

15 The defendant is a native and citizen of Mexico,  
16 who does not have lawful status in the United States and is an  
17 alien for the purposes of Title 8, U.S. Code, Section 1326.

18 On -- on or about December 31st, 2001, the  
19 defendant was convicted of a felony in the Superior Court for  
20 Los Angeles County, California. The defendant was removed from  
21 the United States pursuant to a final order of removal on or  
22 about September 12th, 2002, from at or near Calexico,  
23 California. Thereafter, the defendant reentered the United  
24 States.

25 He was removed from the United States pursuant to

1 an order of expedited removal on or about February 15th, 2003,  
2 from at or near San Ysidro, California. Thereafter, the  
3 defendant reentered the United States.

4 He was removed from the United States pursuant to a  
5 reinstatement of a removal order on or about February 2nd,  
6 2004, from at or near San Ysidro, California.

7 On or about July 14th, 2021, United States  
8 Immigration and Customs Enforcement Officers found the  
9 defendant, who was being held on local charges, at the  
10 Rappahannock Regional Jail in Rappahannock County, Virginia,  
11 within the Eastern District of Virginia.

12 At no time prior to his reentry, and at no time  
13 thereafter, did the defendant obtain the consent of the  
14 Attorney General of the United States or the Secretary of the  
15 Department of Homeland Security to reenter the United States or  
16 reapply for admission to the United States.

17 This statement of facts includes those facts  
18 necessary to support the defendant's plea of guilty to the  
19 charge listed in the indictment in this case, does not include  
20 each and every fact known to the defendant or to the United  
21 States, and is not intended to be a full enumeration of all the  
22 facts surrounding the defendant's case.

23 The actions of the defendant, as recounted here,  
24 were in all respects knowing and deliberate and were not  
25 committed by mistake, accident, or other innocent reason.

1 THE COURT: Thank you.

2 Mr. Rodriguez, would you return to the podium,  
3 please.

4 (DEFENDANT COMPLIES.)

5 THE COURT: Do you disagree with anything the  
6 government has told the Court about your conduct?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: I understand you've also signed a written  
9 statement of facts. Is that correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you have that document in front of you?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Your signature appears on that document,  
14 and you signed that document. Is that correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Did you read, understand, and have all  
17 your questions answered about that document?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Did anyone threaten you or try to  
20 influence you in any way into signing that written statement of  
21 facts against your will?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Are these -- is this written -- are the  
24 statements in this written statement of facts true and correct?

25 THE DEFENDANT: Yes, Your Honor.



1 THE COURT: And is it your decision to enter a  
2 conditional guilty plea here today because you are, in fact,  
3 guilty subject to your preservation of your issue raised on  
4 your motion to dismiss?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Counsel, based on everything you know, is  
7 there an adequate factual basis for the plea in this case?

8 MS. MERTZ: Yes, Your Honor.

9 THE COURT: Before pleading further to the indictment,  
10 would you like to speak with your lawyer?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: With respect to count one of the  
13 indictment, charging illegally reentering the United States  
14 after having been removed and after having been convicted of a  
15 felony in violation of Title 8, U.S. Code, Section 1326(a) and  
16 (b)(1), how do you plead, guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: All right.

19 Let the record reflect that based on the responses  
20 of this defendant through the Court's questions,  
21 representations of counsel for the government and for the  
22 defendant, it's a finding of this Court in the case of *United*  
23 *States versus Claudio Alvarez Rodriguez* that the defendant is  
24 fully competent and capable of entering an informed plea, that  
25 the nature -- defendant is aware of the nature of the charges

1 and the consequences of the plea, and that the plea of guilty  
2 is a knowing and voluntary plea supported by an independent  
3 basis and fact containing each of the essential elements of the  
4 offense. The conditional plea is therefore accepted, and  
5 defendant is now adjudged guilty of that offense subject to his  
6 preserving for review the Court's adverse determination on his  
7 pretrial motion to dismiss the indictment.

8 I understand the government does not oppose  
9 immediate sentencing?

10 MR. GREEN: That's correct, Your Honor.

11 THE COURT: Does the government want to be heard on  
12 that issue?

13 MR. GREEN: On sentencing --

14 THE COURT: Yes.

15 MR. GREEN: Yes, Your Honor.

16 THE COURT: And I've read your memorandum.

17 MR. GREEN: Thank you, Your Honor.

18 Your Honor, I'll just speak briefly since I know  
19 you've seen the sentencing position paper that we've put  
20 forward.

21 We've asked for a sentence of three to four months.  
22 We agree with defense that the guideline range is between zero  
23 to six months, and we do think there are circumstances in this  
24 case that differentiate from sort of a run-of-the-mill case  
25 where we would support a time-served sentence.

1           In this case, there are three prior removals, as --  
2 as the Court knows and as the defendant has admitted.

3           In addition to that, there's a fairly extensive  
4 criminal history, albeit old. The defendant has a prior  
5 felony. And then in addition, you know, just looking at the  
6 general criminal history, it goes back to -- you know, mainly  
7 between 2000 and 2004, there's domestic violence, there's  
8 vehicle theft, there's drug possession, all the while while  
9 being removed from and then reentering the United States. And  
10 then now it's, you know, basically a 16- to 17-year gap where  
11 the defendant is, you know, for all intents and purposes  
12 unaccounted for. And then we have recent charges at the state  
13 level which involved drug possession and also a false  
14 identification to a law enforcement officer.

15           So, what we know about the defendant is that he had  
16 a lengthy criminal history, and then essentially no record for  
17 a long period of time. We don't know where he was during that  
18 time, but now we know that he has state charges and of course  
19 those haven't been resolved yet. But for that reason, you  
20 know, there's -- there is no facts to conclude that the  
21 defendant has changed his ways. It's a possibility, but the  
22 recent charges suggest that certainly has and especially given  
23 the drug charge related to his state conduct, and so instead  
24 what we have is multiple prior removals, returning to the  
25 United States, sometime between now and 2004, and then getting

1 more state charges that have yet to be resolved.

2 On the other hand, the defendant has accepted  
3 responsibility for his conduct, and so for that reason we think  
4 the appropriate middle ground is a three to four-month  
5 sentence, what should be approximately one additional month  
6 beyond what the defendant has already served.

7 THE COURT: He's been in custody since -- federal  
8 custody since July 15. Is that --

9 MR. GREEN: Yes, Your Honor.

10 THE COURT: All right.

11 MR. GREEN: That's all I have, unless the Court has  
12 questions.

13 THE COURT: All right. Thank you.

14 MR. GREEN: Thank you, Your Honor.

15 THE COURT: Ms. Mertz.

16 MS. MERTZ: Thank you, Your Honor.

17 Your Honor, just to frame the math here, he has  
18 been in custody since July 15th, Marshals custody; was taken  
19 into ICE custody the day before. He actually was in custody  
20 since June 23rd, on credited state time.

21 So actually, we are asking for time served, but  
22 we're not far apart at all --

23 THE COURT: Right.

24 MS. MERTZ: -- if apart at all. We're not -- there's  
25 really not much daylight there.

1 Time served in this case would be about three and a  
2 half months. Mr. Alvarez -- that's a longer period than would  
3 normally be requested for time served in a zero to six month  
4 case, largely a function of litigating this motion to dismiss,  
5 which has taken a little bit longer than the parties usually  
6 would resolve the case maybe more quickly.

7 But in any event --

8 THE COURT: Where was he in state custody?

9 MS. MERTZ: Rappahannock Regional Jail. He was  
10 arrested in Spotsylvania on possession of -- a possession  
11 charge.

12 THE COURT: All right.

13 MS. MERTZ: So he was there three weeks and has a  
14 court date tomorrow which was the next scheduled court date.

15 THE COURT: All right.

16 MS. MERTZ: It's a coincidence, but it's tomorrow.

17 Your Honor, Mr. Alvarez was brought to this country  
18 as a toddler in the 1970s. He was educated here. Literally  
19 his entire family is here.

20 His parents are citizens. All of his siblings are  
21 citizens. His wife is a citizen. She's a born American  
22 citizen, just to distinguish that from naturalization.

23 He has children who are all American citizens. His  
24 wife is pregnant. He's lived -- as you can hear from his --  
25 you know, he doesn't need an interpreter. He is -- feels

1 American. He's been here since he was a toddler, so it is  
2 difficult for him to -- to return to Mexico, but he is aware of  
3 the consequences, obviously having spent this time in custody.

4 I -- I want to push back on this, the government's  
5 notion of his criminal record.

6 He had lawful status as a child. He was granted  
7 first temporary residency and then permanent residency. And he  
8 did fall into drug addiction in the late '90s and early 2000s  
9 and did have a criminal record at that time.

10 That was actually, unfortunately, while he had  
11 lawful status, and it is the reason he lost that status and was  
12 deported in 2002. But since then, he actually -- although he  
13 did come back twice thereafter trying to get into the country,  
14 and obviously a third time successfully, he has done everything  
15 to show that he has reformed his life.

16 He moved across the country -- his whole family is  
17 in California -- and he has lived without any incident for  
18 almost 20 years. So I would strongly dispute this  
19 characterization that we don't know, you know, what his  
20 trajectory is and that he hasn't given any facts to -- to show  
21 that he has reformed.

22 He does have a pending drug charge, and we all know  
23 that addiction is a difficult thing. But it's a possession  
24 charge. It is not something other than that.

25 Your Honor, he's already served three and a half

1 months. I won't belabor the point, but we think time served  
2 here is appropriate and that would be three and a half months.

3 THE COURT: All right.

4 MS. MERTZ: Again, this is a zero to six-month case,  
5 so we're talking about the center of the range.

6 THE COURT: All right. Thank you.

7 Mr. Rodriguez, you have the right to address the  
8 Court before it decides whether to sentence you and what that  
9 sentence should be, if it decides to sentence you.

10 THE DEFENDANT: I'm sorry. Excuse me?

11 THE COURT: Yes. You have the opportunity to address  
12 the Court if you would like to say anything --

13 THE DEFENDANT: Your Honor --

14 THE COURT: -- before it decides what sentence --

15 THE DEFENDANT: -- I apologize for any wrongdoings or  
16 any felonies or things that I have done wrong in the past. I  
17 mean, like she says, I've been here my whole life. I mean,  
18 this -- all I know is United States. I don't know nothing from  
19 Mexico.

20 I mean, the reason I came back was because of my  
21 family. I have none -- I have nobody there. I mean, if I were  
22 to stay there, I would be living in the streets because I have  
23 nowhere to live.

24 I've been married for 15 years now. I mean, I have  
25 three kids, and my wife is pregnant now. I mean, I have

1 nothing -- I have nothing in Mexico for me, sir.

2 THE COURT: All right. Thank you.

3 The Court's reviewed the file, and based on the  
4 file of the Court finds it has sufficient information to  
5 meaningfully exercise its sentencing authority and will proceed  
6 with sentencing.

7 In that regard, the defendant is -- guideline  
8 sentence is zero to six months based on the criminal history of  
9 I. The Court has also considered the sentencing factors under  
10 Section 3553, including the nature and seriousness of the  
11 offense and the defendant's own personal history and  
12 characteristics.

13 The Court has also considered the details of the  
14 criminal history, including the age of the convictions and the  
15 nature of those convictions. The Court has also considered the  
16 amount of time that he has spent in custody and that he'll  
17 continue to remain in immigration custody following his  
18 completion of any sentence.

19 The Court has also considered his acceptance of  
20 responsibility. The Court's in a position to impose sentence  
21 at this time.

22 Mr. Rodriguez, it will be the sentence of this  
23 Court that you be committed to the Bureau of Prisons for a  
24 period of time served following which you'll be placed on  
25 supervised release for a period of two years under the standard



1 terms and conditions, and also upon your completion of your  
2 incarceration you'll be surrendered to a duly-authorized  
3 representative of Homeland Security for any deportation  
4 proceedings.

5 And if deported, you'll remain outside the United  
6 States and not reenter without the written consent of the  
7 Attorney General. And your supervised release will also be  
8 subject to the other standard terms and -- terms and  
9 conditions. And that will be the sentence of the Court.

10 The Court will not impose a fine. The Court will  
11 impose a \$100 special assessment.

12 All right. Anything further?

13 MR. GREEN: No, Your Honor.

14 MS. MERTZ: No, Your Honor. Thank you, Your Honor.

15 THE COURT: All right. Thank you. Counsel are  
16 excused. Defendant is remanded.

17 (PROCEEDINGS CONCLUDED AT 9:55 A.M.)

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1 UNITED STATES DISTRICT COURT )  
2 EASTERN DISTRICT OF VIRGINIA )  
3

4 I, JULIE A. GOODWIN, Official Court Reporter for  
5 the United States District Court, Eastern District of Virginia,  
6 do hereby certify that the foregoing is a correct transcript  
7 from the record of proceedings in the above matter, to the best  
8 of my ability.

9 I further certify that I am neither counsel for,  
10 related to, nor employed by any of the parties to the action in  
11 which this proceeding was taken, and further that I am not  
12 financially nor otherwise interested in the outcome of the  
13 action.

14 Certified to by me this 15TH day of DECEMBER, 2021.  
15  
16  
17

18 /s/  
19 JULIE A. GOODWIN, RPR  
20 Official U.S. Court Reporter  
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